

1 **ANDREW C. BAILEY**
2 2500 N. Page Springs Rd
3 Cornville, AZ 86325
4 928 634-4335
5 *Self-Represented Litigant*

FILED
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CLERK
U.S. BANKRUPTCY
DISTRICT OF ARIZONA

6 **IN THE UNITED STATES BANKRUPTCY COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 **ANDREW C. BAILEY**
9 Plaintiff

Chapter 11

Case #: 2:09-bk-06979-PHX-RTBP

2:09-ap-1731

10 vs

11 WELLS FARGO BANK NA a/k/a WELLS
12 FARGO HOME MORTGAGE
(WELLS FARGO)

13 LEHMAN BROTHERS BANK FSB
14 (LEHMAN BROTHERS)

15 FIRST AMERICAN TITLE INSURANCE CO
16 (FIRST AMERICAN)

17 JOHN DOES "1-1000"

18 Defendants
19

**COMPLAINT FOR DISCOVERY,
EVIDENTIARY HEARING,
ENFORCEMENT OF QUALIFIED
WRITTEN REQUEST AND
TEMPORARY RESTRAINING
ORDER**

21 Plaintiff sues Defendants to compel discovery, to answer the Qualified Written Request
22 (QWR) and Debt Validation Letter (DVL) pursuant to the Real Estate Settlement
23 Procedures Act (RESPA), and to stay any foreclosure or other action before and until
24 the resolution of this complaint, and states:
25

1 **I. Jurisdiction, Venue and Statutory Predicate**

2
3 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.
4 This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in
5 this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
6

7 2. The primary statutory predicate for the relief requested herein is Federal Rule of
8 Bankruptcy Procedure 7001(2) to determine the validity, priority, or extent of a lien or
9 other interest in property, other than a proceeding under Rule 4003(d), and Federal Rule of
10 Bankruptcy Procedure 7001(9) to obtain a declaratory judgment relating to the foregoing.
11 Other Rules may apply.
12

13 **II. Parties Known and Unknown**

14
15 3. There appear to be multiple known and unknown stakeholders with potential claims
16 relating to the subject Property and mortgage "loan". Plaintiff seeks discovery as to
17 exactly who these stakeholders and other parties are, what their respective rights are
18 under the law, and how much, if anything, he owes them.
19

20 4. Plaintiff is a resident of the State of Arizona living in and otherwise using and
21 occupying his home located at 2500 North Page Springs Rd, Cornville, AZ 86325
22 (hereafter the "Property")
23

24 5. Defendant WELLS FARGO is and was, at all times material hereto, a corporation doing
25 business in the State of Arizona. Defendant WELLS FARGO is and was, at all times

1 material hereto, the alleged "originator" and "servicer" of the subject loan.
2

3 6. Defendant LEHMAN BROTHERS is and was, at all times material hereto, a corporation
4 or a bankrupt corporation doing business in the State of Arizona. The current status and
5 standing of Defendant LEHMAN BROTHERS in the instant case is unknown to Plaintiff. The
6 last-known address for Defendant LEHMAN BROTHERS is c/o ASC, 3476 Stateview Blvd, Fort
7 Mill, SC 29715.
8

9 7. Defendant FIRST AMERICAN TITLE INSURANCE CO is and was, at all times material
10 hereto, a corporation doing business in the State of Arizona. The current status and
11 standing of Defendant FIRST AMERICAN in the instant case is unknown to Plaintiff.
12

13 8. Defendants JOHN DOES "1-1000" are undisclosed, unnamed and unknown investors,
14 participants, corporate or other entities, conduits, trustees, servicers, custodians and
15 others in a commonly-applied mortgage securitization scheme that may or may not have
16 included the subject loan and who may or may not be investors or certificateholders in an
17 mortgage-backed investment vehicle. or vehicles which may or may not be secured in whole or in part
18 by the subject loan.
19

20 **III. Background Material Facts and Grounds for Complaint**

21

22 9. On April 8th, 2009 three of Plaintiff's unsecured creditors filed an involuntary petition
23 against the Plaintiff for relief under Chapter 7 of title 11 of the United States Code (the
24 "Bankruptcy Code").
25

1 10. On May 28th, 2009 (the "Petition Date"), this Court entered an order granting Plaintiff's
2 motion to convert to Chapter11 thereby commencing the above-captioned case.
3

4 11. Plaintiff is operating his businesses and managing his properties as debtor-in-
5 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
6

7 12. Plaintiff has subsequently filed and revised all schedules and other necessary
8 documents, and has satisfied all of the requirements of the Bankruptcy Court and the US
9 Trustee in the case to date.
10

11 13. The United States Trustee's office conducted the initial creditors' meeting
12 pursuant to 11 U.S.C. § 341 on September 4, 2009.
13

14 14. Plaintiff has initiated forensic reviews of his alleged mortgage-related obligations with
15 the goal of determining who his creditors are, and how much is owed to them.
16

17 15. Plaintiff has served, pursuant to the Real Estate Settlement Procedures Act, a Qualified
18 Written Request and Debt Validation Letter on the Defendants through their attorneys of
19 record, where known, in a diligent attempt to clarify the above issues. No timely response
20 or only a partial and insufficient response to the subject request has been received as of
21 the date of the Complaint. A Certificate of Non-Response and a Certificate of Dishonor is
22 being filed with the appropriate authorities.
23

24 16. On or about June 15, 2008 a notice alleging default on the subject "loan" was received
25 by Plaintiff from Defendant WELLS FARGO.

1
2 17. Subsequently, on or about August 18, 2008, Defendant WELLS FARGO "granted,
3 assigned and transferred all beneficial interest" in the Note and mortgage to Defendant LEHMAN
4 BROTHERS. This assignment occurred less than one month prior to Defendant LEHMAN
5 BROTHERS 's bankruptcy, at a time when the subject "loan" was already allegedly in default.
6

7 18. On that same date, August 18, 2008, Defendant WELLS FARGO recorded at the Yavapai
8 County Recorder's office a Notice of Trustee's Sale naming Defendant LEHMAN
9 BROTHERS as the beneficiary under the Deed of Trust.
10

11 19. On August 22, 2008, Plaintiff received a letter from law firm Tiffany & Bosco PA
12 stating that Defendant WELLS FARGO is "the creditor to whom the debt is owed"
13 in apparent contradiction to the same law firm's filings with the Yavapai county Recorder's office four
14 days earlier, as set forth above. No mention is made of Defendant LEHMAN BROTHERS in the
15 letter.
16

17 20. On May 28, 2009 Defendant WELLS FARGO through its attorneys Tiffany & Bosco PA
18 filed a Motion for Relief from Stay stating in the included Proposed Order that "WELLS
19 FARGO BANK NA is the current beneficiary." This statement appears to contradict the recorded
20 facts.
21

22 21. Defendant WELLS FARGO has apparently taken the position that either Defendant
23 LEHMAN BROTHERS previously assigned the mortgage assigned to Defendant LEHMAN
24 BROTHERS as to the Property back to Defendant WELLS FARGO, or that a photocopy of the
25 original unassigned and unendorsed note dated June 9, 2006 executed months and years prior to

1 subsequent recorded and unrecorded assignments and sales is sufficient foundation for Defendant
2 WELLS FARGO's May 28, 2009 foreclosure action.

3
4 22. No such Assignment or currently enforceable Note has been produced to the Plaintiff
5 or the Court, and Defendant WELLS FARGO has failed to prove that it is the holder of all
6 rights under the Note, which would permit the legal holder thereof to declare a default
7 which would trigger a foreclosure.

8
9 23. Further, Defendant WELLS FARGO as alleged or implied "trustee-in-fact" or "attorney-
10 in-fact" for unnamed 'Certificateholders' of an unidentified series of mortgage-backed
11 securities, has failed to demonstrate that it, and not the Certificateholders, is the party
12 with the true ownership interest in the Mortgage the subject of this action, or that the
13 Certificateholders have acceded or legally assigned their rights to and under the subject
14 Mortgage to Defendant WELLS FARGO, specifically the right to seek a foreclosure.

15
16 24. As such, Defendant WELLS FARGO has not demonstrated that it has suffered an
17 actual or threatened injury as a consequence of any default, which distinct and palpable
18 injury is legally required under applicable Federal and State law in order for Defendant
19 WELLS FARGO to satisfy the legal prerequisite to prove that it has a sufficient personal
20 stake in and legal standing to institute the foreclosure on the Property.

21
22 25. As a severance of the ownership and possession of the original Note and Mortgage
23 has apparently occurred and as the true owner and holder of both the original Note and
24 Mortgage are unknown as a result of one or more alleged assignments and the parsed sale
25 of certain rights under the Note in part to at least one third party (Defendant LEHMAN

1 BROTHERS), Defendant WELLS FARGO is legally precluded from foreclosing on the
2 Property unless and until it can demonstrate full legal standing to do so.
3

4 26. As set forth above, Defendant WELLS FARGO is only the alleged "servicer" of the
5 Note, and as such cannot institute or maintain a foreclosure proceeding.
6

7 27. As set forth above, Defendant LEHMAN BROTHERS is or may be the current
8 beneficiary under the Note, and as such Defendant WELLS FARGO cannot institute or
9 maintain a foreclosure proceeding.
10

11 28. This Complaint is being timely filed in accordance with applicable law to challenge the
12 foreclosure prior to the scheduled Trustee Sale or the issuance of any Certificate of Title
13 following sale.
14

15 **IV. RELIEF SOUGHT**

16

17 Plaintiff reaffirms and realleges paragraphs 1 through 28 hereinabove as if set forth more
18 fully hereinbelow.
19

20 29. Plaintiff requests a hearing on the merits, based on the rules of evidence and founded
21 on common discovery and enforcement in obtaining relevant information about his loan.
22

23 30. Plaintiff requests discovery pursuant to Bankruptcy Rules 7026 thru 7037 and FRCP 26
24 thru 37 including but not limited to enforcement of the RESPA QWR and DVL to test the
25 merits of Defendant WELLS FARGO 's allegation that they have the right to enforce the

1 note.

2
3 31. Plaintiff seeks a complete accounting from those individuals, entities or parties
4 involved in the origination, servicing, and securitization of his loan, so that he can
5 discover what undisclosed fees were paid under TILA and RESPA, and the true identities
6 of the people involved in Plaintiff's table-funded loan.
7

8 32. Plaintiff seeks the disclosure of the identity(ies) of the true lender(s) who actually
9 funded the subject loan, and the production of documents and names, addresses and
10 phone numbers of people who can testify under oath at the evidentiary hearing.
11

12 33. Plaintiff requests the opportunity to admit evidence, including but not limited to the
13 results of a forensic analysis of the subject loan and documents on record at the Yavapai
14 County Recorder's office.
15

16 34. Plaintiff requests the opportunity to present expert witness Neil F. Garfield, MBA, JD
17 or another expert witness at the evidentiary hearing.
18

19 35. Plaintiff requests that the Court give serious consideration to Dr. Garfield's expert
20 opinions and testimony as they may apply to Plaintiff's situation and to the situation of
21 millions of other homeowners facing foreclosure.
22

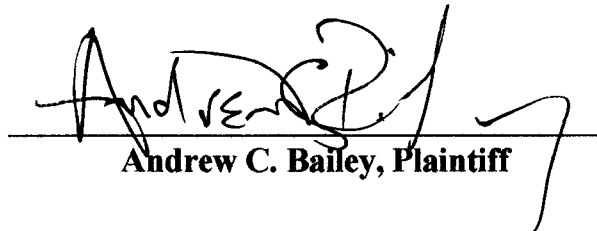
23 36. Plaintiff requests a declaratory judgment relating to the foregoing,
24

25 37. Finally, Plaintiff requests that the court grant a temporary restraining order enjoining

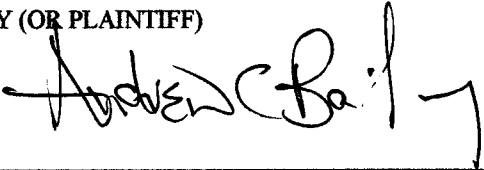
1 Defendants from taking any further foreclosure or other judicial or non-judicial action
2 before the resolution of the foregoing, thereby maintaining the status quo at least until
3 discovery has been conducted.
4
5
6

7 WHEREFORE, Plaintiff respectfully requests that the Court order and grant
8 (a) an evidentiary hearing on the merits, and (b) discovery and enforcement in obtaining
9 all relevant information, and (c) enforcement of the disclosure requirements of the Real
10 Estate Settlement Procedures Act, and (d) the production of documents, and (f) the
11 opportunity to bring an expert witness or witnesses before the court, and (g) a declaratory
12 judgment relating to the foregoing, and (f) a temporary restraining order as set forth
13 above, and (e) such other and further relief as may be just and proper.
14
15
16

17 Dated December 22, 2009
18
19

20
21 
22 **Andrew C. Bailey, Plaintiff**
23
24
25

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only) 01-1731
PLAINTIFFS <div style="font-size: 1.2em; font-family: cursive;">ANDREW C. BAILEY</div>	DEFENDANTS <div style="font-size: 1.2em; font-family: cursive;">WELLS FARGO BANK NA LEHMAN BROTHERS BANK JOHN DOES "1-1000"</div>	
ATTORNEYS (Firm Name, Address, and Telephone No.) <div style="font-size: 1.2em; font-family: cursive;">NONE - PRO SE</div>	ATTORNEYS (If Known) <div style="font-size: 1.2em; font-family: cursive;">Tiffany E. Bosco, 2525 E. Camelback Ave. Phoenix, AZ 85016-9240</div>	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) <div style="font-size: 1.2em; font-family: cursive;">Discovery, evidentiary hearing, enforcement of RESPA, temporary restraining order. FRBP 7001(2), 7001(4), 7026-7037, FRCP 26-37, 12 USC 2605(e), 15 USC 1601</div>		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) - Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 1. 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="font-size: 0.8em;">(continued next column)</div>	FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) - Injunctive Relief <input type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 2. 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa et seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) <input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought 1. Enforcement of RESPA and TILA 2. Temporary Restraining Order		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR ANDREW C. BAILEY		BANKRUPTCY CASE NO. 2:09-bk-06979-PHX-RBP	
DISTRICT IN WHICH CASE IS PENDING ARIZONA	DIVISIONAL OFFICE PHX	NAME OF JUDGE BAUN	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE 12/22/2009	PRINT NAME OF ATTORNEY (OR PLAINTIFF) ANDREW C. BAILEY		

Print Form

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.